

# **The Construction Conversation**

## **Ohio's Legislative, Administrative, and Judicial Two-Way Newsletter**

March, 2022

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### **Legislative: Cooperative Purchasing of Construction Services**

The Senate Local Government Committee is actively hearing Senate Bill 260, which would expand government's authority to "cooperatively purchase" construction contractor services without competitive bidding. (Cont'd page 2.)

### **Legislative: Occupational Licensing**

State Representative Jena Powell (R, Arcanum) is sponsoring both HB 181 and HB 203, to relax requirements for professional licensing in the construction industry. House Bill 181 would allow a graduate of any certified apprenticeship program to test as a construction contractor for a trades business license from the Ohio Construction Industry Licensure Board. (Cont'd p. 2.)

### **Administrative: Rest Area Design Competition**

The Ohio Facilities Construction Commission received initial proposals from Design Professionals to renovate Ohio's Rest Area facilities along its highways. (Cont'd p. 2.)

### **Legislative: Capital Reappropriations**

House Bill 597 passed the House unanimously, to provide \$2.09 billion in construction funding as required by Ohio's Constitution through the biennium ending June 30, 2024. (Cont'd p. 3.)

### **Judicial: Challenging Arbitration**

A homeowner objected to an arbitration award for "double-counting" overhead and profit, appealing for reversal based on facts. But Ohio law only allows limited appeals in arbitration. (Cont'd p. 3.)

### **Legislative: Licensure Review**

Effective April 5, 2019, Senate Bill 255 required review of all state licenses to determine whether any should be eliminated or revised. House Bill 509 implements certain recommendations. (Cont'd p. 3.)

### **Judicial: HVAC Contractor Interest and Attorney Fees**

A homeowner refused to pay for the purchase and installation of a home heating system. Upon the HVAC contractor's suit, the court found the homeowner liable, but denied interest and attorney fees. The contractor appealed, and the Court of Appeals reversed in the contractor's favor. (Cont'd p. 3.)

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## **Legislative: Cooperative Purchasing of Construction Services (Cont'd)**

Sponsored by Senator George Lang (R, West Chester), the bill would add the phrase “construction services” to R.C. 9.48, allowing any public authority to hire construction contractors from a “joint purchasing program” facilitated by national or state associations of political subdivisions.

This change of law would eliminate all requirements of public notice and construction low bidding for public works.

When a local authority sought legal advice whether existing law already allowed such purchases, the Ohio Attorney General opined that the statute did not permit avoiding the competitive bidding laws. Attorney General Opinion 2019-028.

Several school organizations and manufacturing representatives testified in favor of the change to law.

The Associated General Contractors testified against the legislation. “Cooperative purchasing for construction services will lessen opportunities for Ohio contractors to work on public projects and undermines Ohio’s current open and competitive procurement laws for public construction,” testified Angela Ashley, AGC.

The Committee has held both Sponsor and Proponent Testimony, and may schedule a third Opponent Hearing.

## **Legislative: Occupational Licensing (Cont'd)**

The legislation ignores the distinction between experience of an

employee working in the field with the tools, in contrast to front-office business experience as an employer required to take the contractors’ tests.

Assigned to the Commerce and Labor Committee which has held three hearings, opponents testified representing the IBEW, Ohio Contractors Association, Ohio State Building and Trades Council, and the Ohio Pipe Trades Association.

House Bill 203 would require the OCILB, the Architects’, Landscape Architects’, and Engineers’ Boards to issue an Ohio license to any applicant who holds another state’s license. The policy is not reciprocal. Senate Bill 131 is proceeding on the same subject-matter in the Workforce and Higher Education Committee.

The sponsor’s goal is to remove obstacles to new business formation in Ohio, regardless of current qualification requirements or existing reciprocity laws.

The State and Local Government Committee has held five hearings on HB 203, during which the bill was amended twice, removing certain agencies. Several professions registered opposition, including the Ohio Building Officials Association.

## **Administrative: Rest Area Design Competition (Cont'd)**

“Submissions for the first stage of the contest should express the concept for the facility as an architectural statement.” Finalists for Stage 2 will receive a \$2,500.00 stipend to detail floor plans and visual renderings, due April 12, 2022.

The winner will develop design documents for the Ohio Department of Transportation, for this vertical construction.

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## **Legislative: Capital Reappropriations** (Cont'd)

The Senate Finance Committee passed the bill out, now heading for the Senate floor, then to the Governor for line-item veto and signature.

Reappropriations are for funds not spent in the prior biennium. Following passage of this bill, the House Finance Committee will consider new funding in a capital appropriation for the new biennium.

Ohio's 38 public colleges and universities are the primary recipients, including over \$93 million to The Ohio State University. Projects include various separate trades projects across all campuses.

The Ohio Department of Natural Resources will receive over \$63 million, and the Ohio Department of Rehabilitation and Corrections will receive over \$182 million.

## **Judicial: Challenging Arbitration** (Cont'd)

The Court of Appeals noted the limited nature to challenging an arbitration decision. R.C. 2711.10(D) requires the arbitration award to be vacated only when the arbitrators "exceeded their powers". This is a question of law, not of fact, to determine whether any statutory grounds for reversal exists.

The Court of Appeals stated several significant principles:

- An arbitrator exceeds his authority if the award does not draw its essence from the contract.
- An arbitrator's award departs from the essence of the agreement when the

award conflicts with express terms of the agreement.

- An arbitrator's award departs from the essence of the agreement when the award is without rational support or cannot be rationally derived from the terms of the agreement.

- An arbitrator exceeds his authority when awarding consequential damages and lost profits if expressly prohibited by the contract.

- Arbitrators have broad authority to fashion a remedy, even if the remedy is not explicitly mentioned in the contract.

- The limited scope of judicial review of arbitration is a creature of contract, the benefit of the parties' bargain.

*Zeck v. Smith Custom Homes & Design*, 8<sup>th</sup> Dist. Cuyahoga, 2022-Ohio-622.

## **Legislative: Licensure Review** (Cont'd)

The State and Local Government Committee reviewed 225 licenses, including 19 different boards.

Generally, the Committee recommended no changes. Those licenses determined to be amended generally came pursuant to the agency's own review and recommendations.

The Committee also reviewed licensure fees and structure, noting significant discrepancies with neighboring states. Accordingly, the legislation will require certain boards to compare their fees relative to other states, for consideration in revising Ohio licensure fees.

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## **Judicial: HVAC Contractor Interest and Attorney Fees (Cont'd)**

R.C. 1303.03(A) requires payment of pre-judgment interest on a contract claim from the date payment was due, not as a penalty, but to make the contractor whole. The only issue of fact is when payment was due, from which date interest is calculated.

The homeowner counterclaimed based on the Consumer Sales Practices Act, without factual support. Refusing to answer discovery, the homeowner's conduct of the litigation may be frivolous under R.C. 2323.51(A). Further, R.C. 1345.092 allows award of attorney fees for groundless or bad faith claims under the CSPA.

The Court of Appeals found that the contractor demonstrated "arguable merit" that attorney fees were warranted. Accordingly, the trial court must allow the contractor a hearing to consider an award of attorney fees.

*Classic Comfort Heating & Supply v. Miller*,  
2<sup>nd</sup> Dist. Darke, 2022-Ohio-855.

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Join us in

## **The Construction Conversation**

**Call-In**

on

**Wednesday, April 13, 2022**

3:30 p.m.

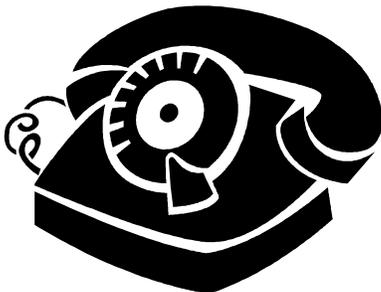
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Meeting ID: 876 8654 6323

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